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COURT OF APPEALS

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 3**

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No. 2020AP000881 CR
Circuit Case No. 2018CM000053

v.

KYLE M. KLEINSCHMIDT,

Defendant-Appellant.

**APPELLANT'S BRIEF
AND APPENDIX**

Appeal from the Judgment of Conviction and Sentence entered in Lincoln
County Circuit Court
Honorable Jay R. Tlusty, presiding

SUBMITTED BY:

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TABLE OF CONTENTS

	<u>Page</u>
COMPLIANCE CERTIFICATE	i
TABLE OF AUTHORITIES CITED	ii
STATEMENT OF THE ISSUES	iii
STATEMENT ON ORAL ARGUMENT	iii
STATEMENT REGARDING PUBLICATION ..	iii
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	3
ARGUMENT	4
I. THE TRIAL COURT ERRED BY DENYING KLEINSCHMIDT’S MOTION TO SUPPRESS BASED ON AN ILLEGAL STOP ...	4
II. SECTION TRANS 305.15(5)(a) DOES NOT APPLY IN THIS CASE ...	9
A. OFFICER PERRA WAS NOT AWARE OF TRANS 305.15(5)(a) AT THE TIME OF THE ILLEGAL TRAFFIC STOP ...	9
B. SECTION TRANS 305.15(5)(a) EXCEEDS THE AUTHORITY GRANTED IN WIS. STAT. § 347.14 AND THEREFORE IS INVALID ...	10
CONCLUSION	12
APPENDIX CERTIFICATE	13
APPELLANT'S APPENDIX	15

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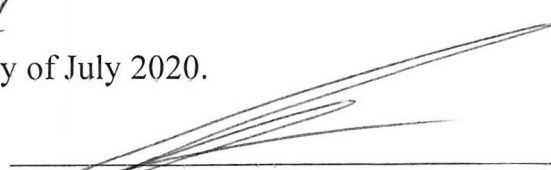
KYLE M. KLEINSCHMIDT,

Defendant-Appellant.

COMPLIANCE CERTIFICATE

I hereby certify that this Appellant's Brief and Appendix conforms to the form and length requirements of Rule 809.19(8)(b) and (c) in that it is typewritten using a proportional font. The length of this Appellant's Brief is 2,865 words. I further certify in accordance with Rule 809.19(12)(f) that the text of the electronic copy of this Appellant's Brief and Appendix is identical to the text of the paper copy of this Appellant's Brief and Appendix.

Dated this 23rd day of July 2020.



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TABLE OF AUTHORITIES CITED

<u>Wisconsin Case Law</u>	<u>Page</u>
<i>Affeldt v. Green Lake Cnty.</i> , 2011 WI 56, 335 Wis.2d 104, 803 N.W.2d 56	6
<i>State ex rel. Kalal v. Circuit Court of Dane Cnty.</i> , 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110 . . .	6, 7
<i>State v. Brown</i> , 2014 WI 69, 355 Wis. 2d 668, 850 N.W.2d 66	7
<i>State v. Houghton</i> , 364 Wis. 2d 234, 868 N.W.2d 143 (2015)	7, 8
<i>Mallo v. DOR</i> , 2002 WI 70, 253 Wis.2d 391, 645 N.W.2d 853	10
<i>Seider v. O'Connell</i> , 2000 WI 76, 236 Wis. 2d 211, 612 N.W.2d 659	10, 11

Wisconsin Statutes Administration Code

Wisconsin Statute § 347.14	<i>Passim</i>
Wisconsin Statute § 343.44	1
Wisconsin Statute § 946.49	1
Wisconsin Statute § 971.31(10)	4
Wisconsin Administration Code Trans 305(15)(a)	9, 10

STATEMENT OF THE ISSUES

1. Did the trial court err by denying Kleinschmidt's motion to suppress?

Trial Court: No.

STATEMENT ON ORAL ARGUMENT

Defendant-Appellant, Kyle M. Kleinschmidt believes that since this case involves the application of the facts in the record to existing case law, oral argument is not necessary.

STATEMENT REGARDING PUBLICATION

This case involves a traffic stop and applying the standard of objectively reasonable mistake of law. Appellant, Kyle M. Kleinschmidt submits that the opinion would be instructive to all circuit courts and therefore has statewide implications and that publication is advisable.

STATEMENT OF THE CASE

A Criminal Complaint was filed on March 19, 2018 which alleged one count of Operating Vehicle While Revoked and one count of Misdemeanor Bail Jumping against Kyle M. Kleinschmidt (“Kleinschmidt”) pursuant to Wisconsin Statutes §§ 343.44(1)(b), 343.44(2)(ar)2, 946.49(1)(a) and 939.51(3)(a). (R. 3).

An initial appearance was held on March 19, 2018. (R. 70). At that time, the trial court entered not guilty pleas on behalf of Kleinschmidt and set cash bail at \$250.00. (*Id.* at 3-4).

On November 9, 2018 a plea and sentencing hearing was scheduled. (R. 69). At this hearing, Kleinschmidt’s trial counsel moved to withdraw. (*Id.* at 2). The court granted the motion. (*Id.* at 3).

On February 1, 2019 a hearing was held on Kleinschmidt’s motion to suppress. (R. 66). The court heard testimony from Police Officer Kurt Perra. (*Id.* at 3-17 and 45-50). The court also listened to arguments of counsel. (*Id.* at 17-44 and 50-67).

On March 19, 2019, the court issued a written decision denying Kleinschmidt’s motion to suppress the traffic stop. (R. 39). Kleinschmidt moved to reconsider the motion. (R. 41). The trial issued a letter decision declining to reconsider the motion. (R. 43).

On June 10, 2019 the case was scheduled for a plea and sentencing hearing. (R. 68). At that time, Kleinschmidt requested an adjournment to address probation issues with his agent prior to sentencing. (*Id.* at 2-3). The court granted the adjournment. (*Id.* at 4).

On August 12, 2019 a plea and sentencing hearing was held. (R. 67). At this hearing, Kleinschmidt entered no contest pleas to the charges of Operating a Vehicle While Revoked and misdemeanor bail jumping. (*Id.* at 3-4). The court accepted Kleinschmidt's no contest pleas. (*Id.* at 8). The court heard testimony from Kleinschmidt's employer before rendering a sentence. (*Id.* at 9-12). The court then withheld sentence and placed on probation for 18 months.

STATEMENT OF THE FACTS

On March 18, 2018, in the City of Merrill, Lincoln County Wisconsin, Kleinschmidt drove his pickup past Officer Perra who recognized Kleinschmidt and suspected Kleinschmidt did not have a valid drivers' license. (R. 3; Criminal Complaint). Officer Perra followed the pickup and noticed that the high-mounted stop light above the rear window of the pickup was not working, and, based on that observation initiated a traffic stop. (*Id.*). As a result of the traffic stop, Officer Perra discovered that Kleinschmidt did not have a valid driver's license and that he was on bail for a misdemeanor in another county. (*Id.*).

ARGUMENT

I. THE TRIAL COURT ERRED BY DENYING KLEINSCHMIDT'S MOTION TO SUPPRESS BASED ON AN ILLEGAL STOP.

Wis. Stat. § 971.31(10) states that “[a]n order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint.” As such, a challenge by Kleinschmidt to the trial court’s order denying his motion to suppress can be raised even though he has entered no contest pleas to the charges.

At the suppression hearing, Police Officer Kurt Perra testified that he saw Kleinschmidt drive past him in a pickup truck and because he was aware that Kleinschmidt had prior OARs he pulled out behind Kleinschmidt to get a license plate number to determine if Kleinschmidt had a valid drivers’ license. (R. 66; p. 5). However, before Officer Perra could enter the plate number, Kleinschmidt pulled into a parking lot and Office Perra noticed that the high-mount brake light on the truck’s cab was not working. (*Id.* at 5-6). At that time, Officer Perra activated his emergency lights and began making a traffic stop. (*Id.* at 6). There is no

dispute that at the time of the traffic stop, the two brake lights mounted on the back of Kleinschmidt's pickup were in good working order. There also is no dispute that Officer Perra based his decision to stop Kleinschmidt on the stop light statute, Wis. Stat. § 347.14. (*Id.* at 13-14; *see also* R. 52; Exhibit (dash video). Subsequent to the traffic stop, Officer Perra discovered that Kleinschmidt did not have a valid driver's license and was out on bail from a misdemeanor charge in another county which resulted in the Kleinschmidt being charged in this case. (R. 66; p. 9).

Kleinschmidt moved the trial court for an order to suppress the evidence Officer Perra obtained after making the traffic stop. (R. 30). Kleinschmidt contends that the brake lights on his truck were not in violation of the statute and therefore, Officer Perra had no legal basis to make the traffic stop. The trial court denied the motion and concluded that "Officer Perra did have a reasonable suspicion to believe that the defendant had violated a traffic regulation, that being an equipment violation involving a stop lamp, and therefore, the temporary detention of the defendant was lawful". (R. 39).

Wis. Stat. § 347.14 states as follows:

347.14 Stop lamps.

(1) No person shall operate a motor vehicle, lightweight utility vehicle as defined in s. 346.94 (21) (a) 2., mobile home, or trailer or

semitrailer upon a highway unless such motor vehicle, lightweight utility vehicle, mobile home, or trailer or semitrailer is equipped with at least one stop lamp mounted on the rear and meeting the specifications set forth in this section. The stop lamp on a mobile home or trailer or semitrailer shall be controlled and operated from the driver's seat of the propelling vehicle. A stop lamp may be incorporated with a tail lamp. No vehicle originally equipped at the time of manufacture and sale with 2 stop lamps shall be operated upon a highway unless both such lamps are in good working order.

(2) A stop lamp shall be so constructed as to be actuated upon application of the service or foot brake or separate trailer brake and shall emit a red or amber light plainly visible and understandable from all distances up to 300 feet to the rear during normal sunlight when viewed from the driver's seat of the vehicle following.

The interpretation and application of a statute are questions of law that are reviewed de novo. *Affeldt v. Green Lake Cnty.*, 2011 WI 56, ¶ 32, 335 Wis.2d 104, 803 N.W.2d 56. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Court of Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis.2d 633, 681 N.W.2d 110.

Statutory construction begins with the language of the statute. *Id.*, ¶ 45. If the meaning of the statutory language is plain, the inquiry ends. *Id.* We must presume that the legislature “ ‘says in a statute what it means and means in a statute what it says,’ ” and we give the language its common, ordinary, and accepted meaning, except that technical or specially defined words are

given their technical or special meaning. *Id.*, ¶¶ 39, 45 (quoted source omitted). ““If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.”” *Id.*, ¶ 46 (quoted source omitted).

Wis. Stat. § 347.14 is not ambiguous and the language is plain. If a vehicle has two brake lights, both of the lights must be in good working order. The statute makes no mention of a third brake light. Kleinschmidt’s pickup had two rear brake lights in good working order, as such, no violation of the statute. Officer Perra’s decision to stop Kleinschmidt’s pickup, based on a violation of Wis. Stat. § 347.14, was a mistake of law.

Similarly, in *State v. Brown*, 2014 WI 69, 355 Wis. 2d 668, 850 N.W.2d 66 the court found that “one unlit bulb in a tail lamp does not establish a violation of Wis. Stat. § 347.13(1)” which constituted a mistake of law. *Id.* at ¶ 41. However, in *State v. Houghton*, 364 Wis. 2d 234, 868 N.W.2d 143 (2015) the court held that “an officer's objectively reasonable mistake of law may form the basis for a finding of reasonable suspicion.”

Kleinschmidt contends that the traffic stop by Officer Perra was not based on an objectively reasonable mistake of law. In *Houghton*, the defendant was driving a car with an air freshener hanging from the rearview

mirror and a GPS unit visible in the windshield. Wis. Stat. § 346.88 created a violation for “any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear view through the front windshield”. In *Houghton*, the court found that Wis. Stat. § 346.88 does not create an absolute prohibition on *any* object being present in the front windshield of a vehicle. However, Officer Price's interpretation that the statute did create such a prohibition was objectively reasonable. ¶ 6.

In this case Wis. Stat. § 347.14 does not create a violation for a third brake light that may not be in good working order. However, Officer Perra interpreted the statute to create a violation for a third brake light. Since Wis. Stat. § 347.14 makes no reference to a third brake light, there simply is no basis in the statute for Officer Perra's interpretation to apply to a third brake light. Officer Perra's interpretation falls short of the *Houghton* requirement of being objectively reasonable. As such, the trial court's decision is in error and must be reversed.

II. SECTION TRANS 305.15(5)(a) DOES NOT APPLY IN THIS CASE.

In response to Kleinschmidt's motion to suppress, the State provided Section Trans 305.15(5)(a) to the trial court. Section Trans 305.15(5)(a) states as follows:

The high-mounted stop lamp of every motor vehicle originally proper working condition and may not be covered or obscured by any object or material.

A. OFFICER PERRA WAS NOT AWARE OF TRANS 305.15(5)(a) AT THE TIME OF THE ILLEGAL TRAFFIC STOP.

At the hearing Officer Perra testified that he had not read nor studied Section Trans 305.15(5)(a) until shortly before the hearing when the district attorney provided the regulation to him. (R. 66; pp. 49-50). Since Officer Perra was not aware of Trans 305.15(5)(a) during the stop, it could not have factored into his determination for making the stop. Officer Perra clearly relied solely on Wis. Stat. § 347.14 in making the traffic stop and therefore the existence of Trans 305.15(5)(a) is irrelevant in determining the stop to be objectively reasonable. As shown above, the traffic stop was not objectively reasonable and therefore illegal. The trial court's reliance on

Trans 305.15(5)(a) was inappropriate and the trial court's decision should be reversed.

B. SECTION TRANS 305.15(5)(a) EXCEEDS THE AUTHORITY GRANTED IN WIS. STAT. § 347.14 AND THEREFORE IS INVALID.

An administrative agency has only those powers given to it by statute and an agency may not promulgate a rule that conflicts with a statute. *Mallo v. DOR*, 2002 WI 70, ¶ 15, 253 Wis.2d 391, 645 N.W.2d 853. If a rule is not authorized by statute it must be invalidated. *Id.*, ¶ 14. Resolving an alleged conflict between a rule and a statute requires statutory interpretation, which presents a question of law for our de novo review. *Id.*

As shown above, Wis. Stat. § 347.14 is clear and unambiguous. Kleinschmidt contends that Trans 305.15(5)(a) exceeds the authority of Wis. Stat. § 347.14 and is therefore invalid. Wis. Stat. § 347.14 makes no reference to a high-mounted, third stop light. The statute is limited to situations involving only one or two stop lights. Trans 305.15(5)(a) addresses a third, high-mounted stop light. The statute only provides authority for regulating one or two stop lights. The regulation clearly exceeds the statutory authority and is therefore invalid. *See Seider v.*

O'Connell, 2000 WI 76, 236 Wis. 2d 211, 612 N.W.2d 659. Reliance by the trial court on Trans 305.15(5)(a) is misplaced and therefore the trial court's decision should be reversed.

CONCLUSION

The trial court erred by denying Kleinschmidt's motion to suppress. For this reason, his conviction should be vacated and remanded back to the circuit court with directions to grant the motion to suppress.

Respectfully submitted,



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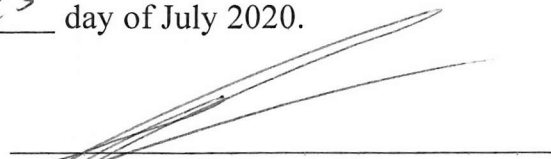
Defendant-Appellant.

APPENDIX CERTIFICATE

I hereby certify that with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 23rd day of July 2020.



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APPELLANT'S APPENDIX

	<u>Page</u>
JUDGMENT OF CONVICTION DATED AUGUST 13, 2019 (R. 56) 101
DECISION (R. 39) 103